

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

199 DELAWARE AVENUE, INC.,

Plaintiff,

v.

**AFFIDAVIT OF
DENNIS M. ADAMS**

LAKE EFFECT ARTISAN ICE CREAM, and

Civil Action No.

LAKE EFFECT ICE CREAM HERTEL, LLC, and

LAKE EFFECT ICE CREAM, LLC, and

LAKE EFFECT ICE CREAM WHOLESALE, LLC, and,

LAKE EFFECT CANAL STREET, LLC,

Defendants.

DENNIS M. ADAMS, being duly sworn, deposes and says:

1. I am the owner of DENNIS M. ADAMS, LLC, which conducts various types of investigations and information gathering activities.

2. I submit this affidavit in support of Plaintiff's Motion for a Preliminary Injunction.

3. I was hired by Plaintiff's owner, Mr. S. Tucker Curtin, on behalf of Plaintiff in July 2018 to investigate the similarities of the signage of Plaintiff's LAKE EFFECT DINER, and Defendants' LAKE EFFECT ARTISAN ICE CREAM businesses.

4. As part of my investigation, I took photographs of Defendants' signage and trademarks on its buildings, products, and vehicles. Photographs of Defendants' building and vehicle signage that I took in July, August, and September 2018 are attached hereto as **EXHIBIT "A"**.

5. I was also tasked with investigating and interviewing consumers, patrons, and vendors of both businesses to determine whether or not there was consumer confusion between the two enterprises.

6. I was able to interview and obtain signed affidavits from five people, Mr. Mark Angrisano, Ms. Shannon Ferro, Mr. Christopher Starck, Mr. James Pennington, and Mr. Italo Besseghini. A true and correct copy of Mr. Mark Angrisano's affidavit is attached hereto as **EXHIBIT "B"**. A true and correct copy of Ms. Shannon Ferro's affidavit is attached hereto as **EXHIBIT "C"**. A true and correct copy of Mr. Christopher Starck's affidavit is attached hereto as **EXHIBIT "D"**. A true and correct copy of Mr. James Pennington's affidavit is attached hereto as **EXHIBIT "E"**. A true and correct copy of Mr. Italo Besseghini's affidavit is attached hereto as **EXHIBIT "F"**.

7. In addition to the confused consumers and business acquaintances, my investigation revealed, among other things, that Defendants were aware of how they were causing customer confusion.

8. On August 27, 2018, I visited Defendants' business, "LAKE EFFECT ARTISAN ICE CREAM," located at 1900 Hertel Avenue, Buffalo, NY. I entered the establishment and proceeded to order and pay for a "Chesterfield Sundae" off of the menu.

9. While ordering, I had a conversation with the Defendants' counter clerk, "Quinn", identified as such by her name badge. I asked if "Tucker" [plaintiff's owner] was around. Quinn then stated that there was nobody working there by the name of "Tucker." I then stated that I thought that Tucker owned the ice cream shop as he owned the nearby Lake Effect Diner. To which Quinn replied, "A lot of people ask that, but Lake Effect Ice Cream has nothing to do with the diner." I then departed the establishment.

10. On September 4, 2018, I again visited Defendants' business, "Lake Effect Artisan Ice Cream," located at 79 Canal Street, Lockport, NY. I entered the establishment and proceeded to order and pay for an ice cream.

11. While ordering, I had a conversation with the Defendants' counter clerk, identified as "Jo". This clerk stated that customers sometimes ask if the "Lake Effect Artisan Ice Cream" store "was owned by the same people who own the Lake Effect Diner on Main Street near UB." I then departed the establishment.

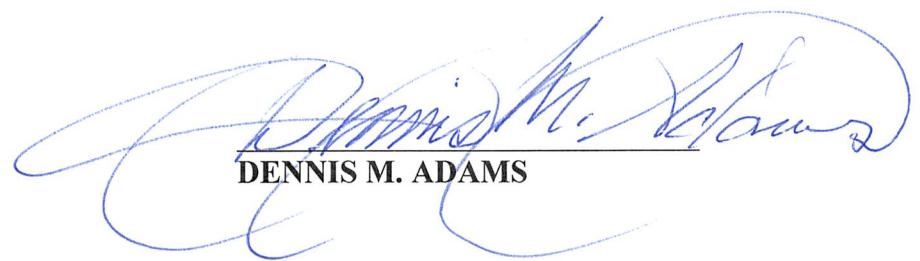
12. On September 5, 2018, I again visited Defendants' business, "Lake Effect Artisan Ice Cream," located at 1900 Hertel Avenue, Buffalo, NY. I entered the establishment and proceeded to order and pay for a "Chesterfield Sundae" off of the menu.

13. While ordering, I had a conversation with the counter clerk, identified as "Sean." I asked him if this business was associated with the Lake Effect Diner and he responded "No. There is no connection between the two businesses." I then asked if people often ask if the two businesses are related, and he replied "Yes, that happens a lot!"

14. During my investigation, I noted that the Plaintiff's Lake Effect Diner business and Defendants' business located at 1900 Hertel Avenue, Buffalo, NY are only 0.7 miles apart in distance.

15. Finally, I took photographs of the signage posted in front of both the Lake Effect Diner and Lake Effect Artisan Ice Cream. I noted that both logos contain the words "LAKE EFFECT." The style of letters of "LAKE EFFECT" on the Defendants' Lockport, NY location signage is extremely similar to that of the Plaintiff's signage. *See Exhibit A.*

February 18th, 2019
Buffalo, New York



DENNIS M. ADAMS

Sworn to before me this
February 18th, 2019



Sherry Koschelny
Notary Public

SHERRY KOSCHELNY
Notary Public, State of New York
No. 01KC6320081
Qualified in Erie County
Commission Expires 03/02/2023